REMARKS

Status of the claims

Claims 1-3, 11-13, 15-33, 31-39 and 41-42 are pending in the application. Claims 4, 14, 34 and 40 are cancelled. Claims 1-3, 11-13, 15-33, and 31-39 are amended herein. Claims 41 and 42 are newly added. Claims 1-3, 11-13, 15-33, and 31-39 have been amended to clarify the scope of the claims and place them in better grammatical format. Claims 15 and 31-34 have been further amended to incorporate the feature of the recited temperature from claim 17 and the feature of the recited stirring speed from claim 18. New claims 41 and 42 are supported by the claims as originally filed. No new matter has been added with the new claims or amendments to the pending claims. As such, entry and consideration thereof are respectfully requested.

Claim Objections

Claim 34 has been objected to as being substantially duplicative of claim 33. Claim 34 has been cancelled, thus rendering this objection moot.

Claim 1 has objected to for recitation of the mathematical symbols "<" and " >". Claim 1 has been amended to replace the symbols with "less than" and "greater than".

Claims 2-3, 5-7 and 9-13 have been objected to with the assertion that the term "compositions" in the preamble of claims 2-3, 5-7 and 9-13 should be in the singular form. The claims have been amended to consistently recite, "a tomato product" or "a composition".

Claim 37 has been objected with the assertion that the term "food" in the preamble of claim 37 should be in the plural form, i.e., "foods" to be consistent with claim 6. Applicants respectfully note that claim 37 as newly presented in the previous response recited "foods".

As the above remarks and amendments address the objections to the claims, withdrawal thereof is respectfully requested.

Claim Rejections – 35 USC 112

Claims 1-3, 5-13 and 15-40 have been rejected under 35 U.S.C. §112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Examiner raises the following issues with regards to the claims.

Claim 1 has been rejected with the assertion that the recitation "a tomato composition or product" renders the claim indefinite because it is not clear what the difference is between a tomato composition and a tomato product.

Claim 5 has been rejected the recitation of "in admixture with lyophilized, or cryoconcentrated, or concentrated tomato juice serum" with the assertion that the claim is indefinite because is not clear if the tomato composition according to claim further comprises a lyophilized, or cryoconcentrated, or concentrated tomato juice serum or if the described tomato serum is part of the original tomato composition or product.

Claim 6 has been rejected for recitation of "foods and foodstuffs" with the assertion that the claim is indefinite because it is not clear what the difference is between foods and foodstuffs and it is not clear whether more than one food or foodstuff is required. Claim 6 has been further rejected with the assertion that recitation "[c]ompositions of the tomato products of claim 1" renders the claim indefinite because claim 6 depends from claim 1 and claim 1 recites "a tomato composition or product".

Claim 7 has been rejected for the recitation of "wherein said foods and foodstuffs are selected from the following: first courses, soups, puree, sauces, juices, legumes, vegetables, yoghurts, cottage cheese and dairy products" with the assertion that it is not clear if the tomato composition according to claim 6 further comprise foods and food stuffs including first courses or if it is the foods and foodstuffs that comprise the tomato composition according to claim 1.

Claim 8 has been rejected for the recitation "[s]auces containing the tomato products of claim 1" because claim 1 is directed to tomato compositions and products.

Claim 11 has been rejected as lacking antecedent basis for "where in the amount of oil" in lines 1-2; "based on the weight of the starting tomato product" in lines 2-3 and "the amount of . . . soft-grain cheese" in line 3.

Claim 12 has been rejected as lacking antecedent basis for "the amount of hard-grain and grated cheese" in lines 1-2.

Claim 13 has been rejected for lacking antecedent basis for "an amount of mayonnaise" in lines 1-2.

Claim 15 has been rejected for lacking antecedent basis for "from the starting tomato product" in line 3 and "recover of the mass on the filter" in line 7. Claim 15 has been further rejected with the assertion that the recitation of "a product having a residual water content lower than 80% by weight, down to 1% by weight" renders the claim indefinite

because it is unclear how the product produced in claim 15 could have a water content down to 1%.

Claims 15, 31-34 and 40 have been rejected for recitation of "slow" with the assertion that "slow" is a relative term which renders the claims indefinite. The Examiner asserts that the term "slow" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear what type of stirring is encompassed by "slow stirring."

Claim 16 has been rejected for lacking antecedent basis for "the tomato juice, the tomato passatas, tomato cubes, chopped tomatoes, and/or peeled tomatoes are used" in lines 1-3. Claim 16 has been further rejected with the assertion that the recitation of "optionally the tomato juice being treated by a hot break or cold break process" renders the claim indefinite because the term "optionally" means that the limitation is not required and therefore it is not a required component of the claimed invention.

Claim 18 has been rejected for lacking antecedent basis for "the suspension" in line 4.

Claim 20 has been rejected for the recitation "the oscillations/minute being from 1 to 20 oscillations/minute" with the assertion that it is not clear what motion the oscillations/minutes refers to.

Claim 25 has been rejected for lacking antecedent basis for "the separator" in line 1.

Claim 27 has been rejected for recitation of "when tomato juice suspension obtained from partially ripened fruits are used". The Examiner asserts that it is not clear whether the "starting tomato product" of step a) in claim 15 is a tomato juice suspension obtained from partially ripened fruits or if the tomato juice suspension obtained from partially ripened fruits is used in a different step of claim 15.

Claim 28 has been rejected for lacking antecedent basis for "the foods" in line 1. Claim 28 has been further rejected with the assertion that the phrase "saucing foods" is indefinite because it is not clear what process is encompassed by the term "saucing".

Claim 30 has been rejected for lacking antecedent basis for "the tomato juice" in line 1.

Claim 31 has been rejected for the recitation of "preparing the tomato products according to claim 1" because claim 1 is directed to a tomato composition or product. Claim 31 has been further rejected for the recitation of "the starting tomato product" with

the assertion the claim is directed to a process for preparing tomato products and it is unclear what the difference is between the starting tomato product and the prepared tomato product.

Claims 31, 32, 33 and 34 have been rejected for lacking antecedent basis for "the mass" in step a). In addition, the Examiner asserts that it is not clear if "the mass" to be filtered is the starting tomato product or another ingredient or material. Further, the recitation "recovery of the mass on the filter" renders the claims indefinite because it is not clear what the difference is between "the mass to be filtered" and the recovered "mass" of step b).

Claims 31, 32, 33, 34 and 40 have been rejected for the recitation of "optionally one or more additions of water and consequent repetition of step a)" and "optional addition of concentrate serum" with the assertion that the term "optionally" renders the claims indefinite.

Claims 31, 32, 33, 34 and 40 have been rejected for the recitation of "obtainment of a product having a residual water content lower than 80% by weight, down to 1% by weight" with the assertion that claim 1 is more narrow than claim 31.

Claim 32 has been rejected for the recitation of "separation of the tomato serum from the starting tomato composition or product" with the assertion that it is not clear what the difference is between the starting tomato composition or product and the prepared tomato composition or product.

Claims 33, 34 and 40 have been rejected for the recitation of "separation of the tomato serum from the starting tomato product" with the assertion that it is not clear what the difference is between the starting tomato composition or product and the prepared tomato product.

Claim 37 has been rejected for the recitation of "wherein the foods used are selected from vegetable oils" with the assertion that it is unclear if the foods are vegetable oils or if the foods are selected from vegetables oils and some other ingredients inadvertently removed from the claim. In this case, there is only one "foods" to choose from, i.e. vegetable oils.

Claim 39 has been rejected for the recitation of "wherein in step a), tomatoes and/or tomato juice, tomato passatas, tomato cubes chopped tomatoes and/or peeled tomatoes are used" with the assertion that it is unclear if in step a) the starting tomato product is tomatoes and/or tomato juice, tomato passatas, tomato cubes, chopped tomatoes and/or peeled tomatoes or the recited ingredients are in addition to the starting tomato product. It is further asserted to be unclear if the choice includes tomatoes and/or tomato juice or tomatoes and/or

tomato juice, tomato passatas, etc.

The claims have been amended as indicated above to address these issues and clarify the scope of the claims. The following remarks regarding specific rejections are further presented. With regard to the term "saucing" (see claim 28) the Examiner is respectfully directed to paragraph [0007] of the published application, in which it is stated that "By saucing power it is meant the product capability to stick to foods." Thus, the specification explicitly defines this term.

With regard to the rejection of the claims for recitation of "optionally", Applicants respectfully note that the recitation of an optional step in a claim does not per se render the claim indefinite or unclear. If a claim recites "step a" + "optionally step b", then it would be readily apparent to one skilled in the art that the claim encompasses two species, i.e. the species of "step a" alone and the species of "step a + step b". The Examiner is referred to MPEP §2173.05(h), wherein it is instructed that recitation of "optionally" is not per se ambiguous and/or unacceptable under 35 U.S.C.§112, 2nd paragraph. The present claims as written are therefore not ambiguous with the recitation of the optional steps.

Withdrawal of the rejections is therefore respectfully requested.

Rejections under 35 U.S.C.§101

Claim 38 has been rejected under 35 U.S.C.§101 as being drawn to a "use" without the recitation of any active steps. Claim 38 has been amended so as to be drawn to a method, which recites active steps. Withdrawal of the rejection is therefore respectfully requested.

Claim Rejections – 35 USC 102

Claims 1-3, 5-10 and 13 remain rejected under 35 U.S.C. §102(a) as being anticipated by de la Cuadra (US 2003/0224100). Regarding claims 1-3 and 5, the Examiner asserts that,

> de la Cuadra et al. disclose a tomato composition made by subjecting tomatoes to a hot break process, separating the resulting product into two steams: one comprising mainly soluble tomato solids or the "thin stream" and one comprising mainly insoluble solids or the "thick stream," concentrating the "thin stream" or serum to yield approximately 30° Brix, and adding the concentrated serum back to the "thick stream" or pulp to obtain a tomato composition with a ratio of soluble tomato solids to insoluble tomato solids of between 1.0:0.7, 1.0:0.8 or 1.0:1.5 ([0034]-[0036], [0045]/Examples 1-2 and 5). de la Cuadra et al. disclose a tomato composition, having about 11%

to 17.5% water (i.e. wherein the concentrated serum is 30° Brix and the pulp comprises 7% water) and about 82.5% to 89% dry residue wherein the dry residue has a ratio of soluble tomato solids to insoluble tomato solids of between 1.0:0.7, 1.0:0.8 or 1.0:1.5 ([0034]-[0036], [0045]/Examples 1-2 and 5).

De la Cuadra et al. is further asserted to teach the compositions of claims 6-10, 35 and 37, de la Cuadra et al. and tomato products such as tomato-based spread, ketchup, sweet tomato sauce and tomato mousse, comprising the tomato composition of claim 1 and 2-50% of one or more components selected from the group consisting of vegetable oil, aroma or flavoring compounds, etc.

In response to the arguments of November 20, 2009, the Examiner states that "de la Cuadra discloses that in the split stream process, substantially all of the soluble tomato solids end up in the thin stream and substantially all of the insoluble tomato solids end up in the thick stream ([0031])." Based on this disclosure, the Examiner asserts that the concentrated thin stream would comprise 30% total solids and the thick stream would comprise 93% total solids. The Examiner further points to ([0045]/Table 1/Examples 1-2 and 5) as disclosing tomato compositions made by combining different ratios of the thick and thin streams that results in products comprising from 11% to 17.5% water and 82.5% to 89% dry residue or total solids.

Applicants traverse this rejection and withdrawal thereof is respectfully requested. As noted above, the Examiner asserts that de la Cuadra et al. disclose a tomato composition made by subjecting tomatoes to a hot break process, separating the resulting product into two streams:

- one comprising mainly soluble tomato solids or the "thin stream" and
- one comprising mainly insoluble solids or the "thick stream," concentrating the "thin stream" or serum to yield approximately 30° Brix,

and adding the concentrated serum back to the "thick stream" or pulp to obtain a tomato composition with a ratio of soluble tomato solids to insoluble tomato solids of between 1.0:0.7,1.0:0.8 or 1.0:1.5 ([0034]-[0036], [0045]/Examples 1-2 and 5).

The Examiner further asserts that de la Cuadra et al. disclose a tomato composition, having about 11% to 17.5% water (i.e. wherein the concentrated serum is 30° Brix and the pulp comprises 7% water) and about 82.5% to 89% dry residue wherein the dry residue has a ratio of soluble tomato solids to insoluble tomato solids of between 1.0:0.7, 1.0:0.8 or 1.0:1.5 ([0034]-[0036], [0045]/Examples 1-2 and 5) and that "de la Cuadra discloses that in

the split stream process, substantially all of the soluble tomato solids end up in the thin stream and substantially all of the insoluble tomato solids end up in the thick stream. Therefore it is clear that the concentrated thin stream would comprise 30% total solids and the thick stream would comprise 93% total solids".

It thus appears that the calculations above made by the Examiner for both the water content and dry residue of the thin stream + thick stream, of Examples 1, 2 and 5 of the reference, have been made based on the assumption that the thin stream of the reference is made of soluble solids (30° Brix) and water only, and the thick stream of insoluble solids and water only. However, there is no basis presented for concluding that the thick stream in de la Cuadra et al. is substantially all of the insoluble solids and the thin stream is substantially all of the soluble solids. In fact, even supposing correct, *arguendo*, the Examiner's assessment to be correct, then in Examples 1, 2 and 5 of de la Cuadra et al. the following equation should be satisfied:

$$\frac{\text{thin stream (dry weight)}}{\text{thick stream (dry weight)}} = \frac{\text{soluble tomato solids}}{\text{insoluble tomato solids}}$$

That is, if substantially all of the soluble tomato solids end up in the thin stream and substantially all of the insoluble tomato solids end up in the thick stream, then the ratio thin stream/thick stream should be the same (or substantially the same), as the ratio soluble tomato solids/insoluble tomato solids.

However, the ratios soluble tomato solids/insoluble tomato solids for the mixture thickstream + thin stream of Examples 1, 2 and 5 are reported in the last row of Table 1 of the reference and it can be seen that this is not the case and the ratio thin stream/thick stream is not the same (or substantially the same), as the ratio soluble tomato solids/insoluble tomato solids

Example 1

In Example 1, the ratio soluble tomato solids/insoluble tomato solids reported in Table 1 is 1.0:1.5, i.e., **0.67**. The dry thick stream is calculated by taking into account the moisture content of 7%, reported in par. [0034] of de la Cuadra. The dry thin stream was calculated according to the Examiner's assumption that the concentrated thin stream would

comprise 30% total solids and therefore the rest to 100% is water. Based on this assumption:

Calculated dry thick stream amount = 65.6 g (70.6X0.93)
Calculated dry thin stream amount = 1.41 g (4.7X0.3).

Therefore the calculated weight ratio of soluble solids/insoluble solids calculated by the ratio thin stream/thick stream is 1:46, i.e., **0.021**.

It is clear that the calculated weight ratio of soluble solids/insoluble solids calculated by the ratio thin stream/thick stream is much lower than the ratio soluble tomato solids/insoluble tomato solids reported in the reference. Thus, it is clear that the Examiner's assumption that substantially all of the soluble tomato solids end up in the thin stream and substantially all of the insoluble tomato solids end up in the thick stream must be in error.

Example 2

In Example 2, the ratio soluble tomato solids/insoluble tomato solids that is reported in Table 1 is 1.0:0.7, i.e., **1.4**.

Calculated dry thick stream amount = 27.9 g (30.0X0.93)
Calculated dry thin stream amount = 1.8 g (6.0X0.3).

The calculated weight ratio thin stream/thick stream is 1:15.5, i.e., **0.064**.
The same comments as for ex. 1 can be repeated.

Thus, Example 2 similarly shows that the calculated weight ratio of soluble solids/insoluble solids calculated by the ratio thin stream/thick stream is much lower than the ratio soluble tomato solids/insoluble tomato solids reported in the reference and that the Examiner's assumption that substantially all of the soluble tomato solids end up in the thin stream and substantially all of the insoluble tomato solids end up in the thick stream must be in error. The same is seen with Example 5, below

Example 5

In Example 5, the ratio soluble tomato solids/insoluble tomato solids that is reported in Table 1 is 1.0:0.8, i.e., **1.25**.

Calculated dry thick stream amount = 22.3 (24.0X0.93)
Calculated dry thin stream amount = 1.1 (3.7X0.3).

Therefore the ratio thin stream/thick stream is 1:20, i.e., **0.05**.

The above calculations show that by applying the assumptions of the Examiner and calculating the ratio of soluble solids/insoluble solids, and therefore the compositions of the tomato products (thick stream+thin stream) of Examples 1, 2 and 5, it is found that the obtained ratios are very different from the corresponding ratios reported at bottom of Table 1. As such, the fundamental premise upon which the rejection for lack of novelty is based is incorrect, i.e. that in de la Cuadra et al. substantially all of the insoluble solids are in the thick stream and substantially all of the soluble solids are in the thin stream, is not verified by the data provided in the reference. From the above it follows that de la Cuadra et al. does not disclose either explicitly or inherently the features of claim 1. Withdrawal of the rejection is therefore respectfully requested.

Claim Rejections Under 35 USC 103

Claims 11-12 and 27-28 remain rejected under 35 U.S.C. §103(a) as being unpatentable over de la Cuadra et al. (US 2003/0224100). Regarding claims 11-12, the Examiner maintains that soft-grain and grated hard-grain cheeses are well known ingredients used in food preparation, and that it would have thus been obvious to one of ordinary skill in the art at the time of the invention to have used any cheese, including soft-grain and grated hard-grain cheese, with the tomato composition of de la Cuadra et al., and arrive at the present invention.

Regarding claims 28-29, the Examiner maintains that since sauces and condiments are known to be mixed with foods, it would have been obvious to one of ordinary skill in the art at the time of the invention to have mixed the tomato composition of modified de la Cuadra et al. with a food (e.g. pasta, meat for meatloaf) to produce a desired food dish or flavor.

Applicants traverse this rejection and withdrawal thereof is respectfully requested. As noted above, the fundamental premise upon which the rejections with de la Cuadra et al. are based, i.e. that in de la Cuadra et al. substantially all of the insoluble solids are in the

thick stream and substantially all of the soluble solids are in the thin stream, is not verified by the data provided in the reference. In addition, as noted in the previous response, the present invention achieves the unexpected improved properties of an improved saucing power, in particular on pasta, and improved preservation (See page 1, P1). There is no suggestion of these features in de la Cuadra et al. Indeed the reference is silent regarding saucing power. As such, the invention is not obvious over the reference teachings and withdrawal thereof is respectfully requested.

Claim 36 remains rejected under 35 U.S.C. §103(a) as being unpatentable over de la Cuadra et al. (US 2003/0224100) in view of Gourmet ("Lowcountry Aioli"). The Examiner maintains that de la Cuadra et al. differs from claim 36 only in failing to explicitly disclose adding mayonnaise to a tomato composition. Gourmet is relied on as teaching that was known to combine mayonnaise with a tomato composition to produce an aioli product. Applicants traverse this rejection and withdrawal thereof is respectfully requested.

As noted above, the fundamental premise upon which the rejections with de la Cuadra et al. are based, i.e. that in de la Cuadra et al. substantially all of the insoluble solids are in the thick stream and substantially all of the soluble solids are in the thin stream, is not verified by the data provided in the reference. In addition, as noted in the previous response, the present invention achieves the unexpected improved properties of an improved saucing power, in particular on pasta, and improved preservation (See page 1, P1). There is no suggestion of these features in de la Cuadra et al. or in Gourmet. As such, the invention is not obvious over the reference teachings and withdrawal thereof is respectfully requested.

Claims 15-27, 30-34, and 39-40 remain rejected under 35 U.S.C. §103(a) as being unpatentable over de la Cuadra et al. (US 2003/0224100) in view of Succar et al. (WO 03/024243). Regarding claims 15-16, 18, 20-21, 23, 30-34, 39 and 40, the Examiner asserts that de la Cuadra et al. differs from the claimed invention only in failing to teach concentrating the recovered pulp or pulp stream and that the starting tomato base is maintained under a slow stirring. Succar et al. is asserted to teach

> a process for making tomato paste comprising processing tomatoes into tomato juice, subjecting the juice to a decanter that separates the juice into two portions (i.e. serum and pulp), concentrating the serum and pulp portions, and recombining the serum and cake portions to produce a tomato paste having improved color, texture, flavor, and nutrition (Abstract). Succar et al. also teach that the tomato material, i.e. juice, is provided to the decanter, the

decanter and internal cake scraping auger are rotated (i.e. stirring the tomato juice), and the cake portion is separated from the serum portion (p.9/L11-17, Figure 4). Succar et al. teach that the scraping auger (i.e. centrally placed stirrer, shape of a helix) has a scroll speed differential of 20-40 rpm (p.9/L30-35). Succar et al. also teach that the decanter comprises a cylindrical vessel with openings *(see* Figure 4/Appeture-431).

The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a decanter that rotates (i.e. stirs) the tomato material during separation, as taught by Succar et al., in the process of de la Cuadra et al. because doing so would amount to nothing more than the use of a known mechanical separating device for its intended use in a known environment to accomplish entirely expected results.

In response to Applicants' arguments of November 20, 2009, the Examiner notes that "while de la Cuadra et al. does not recognize improved saucing and improved preservation power, given de la Cuadra et al. disclose a tomato composition identical to that presently claimed, it is clear that the tomato composition would inherently display the recited saucing and preservation properties" and that the results achieved by the invention are "entirely expected".

The Examiner further notes that Applicants' argued feature that the references fail to teach filtration is not recited in the claims. The Examiner further asserts that the feature of "slow stirring" is not defined in the claims and the teaching of Succar et al. thus reads on the limitation "slow stirring"" Finally, the Examiner notes that "it is unclear where Succar et al. teaches the influence of temperature on the separation process."

Applicants traverse rejection and withdrawal thereof is respectfully requested. As noted above, the fundamental premise upon which the rejections with de la Cuadra et al. are based, i.e. that in de la Cuadra et al. substantially all of the insoluble solids are in the thick stream and substantially all of the soluble solids are in the thin stream, is not verified by the data provided in the reference. As such, the basis of the rejection through the interpretation of the primary reference of de la Cuadra et al. is fundamentally flawed. As such, the rejection must be withdrawn.

The present invention of claims 15-27, 30-34, and 39-40 further differs from the teachings of de la Cuadra et al. combined with Succar et al. for the following reasons. The following is a summary of the Examiner's reasoning for a finding of obviousness of independent process claim 15 over de la Cuadra et al. in view of Succar et al.

De la Cuadra et al. is asserted to differ from present claim 1 in failing to disclose concentrating the recovered pulp or pulp stream and that the starting tomato base is maintained under a slow stirring. Succar et al. is asserted to teach that the tomato material, i.e. tomato juice, is provided to a decanter that separates the serum portion from the cake portion, wherein the decanter and internal cake scraping auger are rotated (i.e. stirring the tomato juice). Succar et al. is further asserted to teach that the cake portion is separated from the serum portion and that the scraping auger has a scroll speed differential of 20-40 rpm.

According to the Examiner, since Succar et al. discloses that it was known to use a decanter to separate the serum and pulp fractions of tomatoes, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a decanter that rotates (i.e. stirs) the tomato material during separation, as taught by Succar et al., in the process of de la Cuadra et al. because doing so it would amount to nothing more than the use of a known mechanical separating device for its intended use in a known environment to accomplish entirely expected results (the last paragraph of page 14).

Claim 15 has been amended to define the separation step a) as follows:

"a) separating tomato serum from a starting tomato product by filtering the starting tomato product using a separation solid-liquid apparatus to form a compact mass on a filter, wherein the starting tomato product is maintained under a slow stirring by a stirrer having an angular speed from 1 to 20 rpm, at a temperature in the range of 5-40°C, for a time until a compact mass is formed..." Thus, it is clear that in the process of claim 15 a decanter is not used for the separation. Nor is a decanter suitable for the separation step. The specification describes that with the inventive method either the solid liquid separator is equipped with a stirrer, or the solid liquid separator can rotate at an angular speed of 1-10 rpm. However, in the instance where the solid liquid separator is rotating there is no mechanical stirrer. See the bottom paragraph of page 11 bridging-line 1 of page 12. Thus, the solid-liquid separator of the present invention is not the same as or similar to a decanter.

The Examiner further asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to have concentrated the thick stream of de la Cuadra et al. to recombine with concentrated thin stream for the purpose of making a thick tomato paste product. However, neither Succar et al., nor de la Cuadra et al. teach how to obtain tomato products having, in particular, an improved saucing power. In addition, if the

teachings of Succar et al. are considered in their entirety they can be seen to actually teach away from the instant invention. In this regard,

1) Succar et al. teach the use of a much higher stirring speed, since to the scroll speed differential of the scraping auger the angular speed of the rotating decanter must be added in order to obtain the true angular speed of the scraping auger.

2) In addition, according to Succar et al., the separation efficiency of the decanter is improved as the temperature increases (see the last line of page 9) and the reference teaches a temperature of approximately 180 to 190 °F, that is 82-88°C. Applicants note that the process of the present invention has an upper temperature limit that is less than half the lower limit of Succar et al. While the Examiner takes the position that since de la Cuadra et al. do not explicitly disclose a temperature in which the separation process is carried out, it can be assumed that the process is carried out at ambient temperature, i.e. room temperature (i.e. about 20°C). However, Succar et al. explicitly teaches, as said above, that the separation efficiency improves by increasing the temperature and that the lower end of the temperature range used should be more than twice that of the temperature recited in claim 15.

Thus, de la Cuadra et al. and Succar et al. teach away from the process of the present invention. In addition, there is no teaching or suggestion in the prior art of how to modify the process of de la Cuadra et al. in order to obtain a tomato product with improved saucing power according to present claim 1.

Regarding the feature of the rotation speed of the stirrer, the Examiner asserts that while Succar et al. teach a decanter that rotates, the reference does not explicitly disclose that it rotates at a speed from 1 rpm to 20 rpm. Succar et al. teach that separation can be adjusted by varying the rotation speed of the decanter. Thus, the Examiner asserts that as separation efficiency is a variable that can be modified, among others, by adjusting the rotation speed of the decanter, the precise rotation speed would have been considered a result effective variable by one of ordinary skill in the art at the time of the invention. However, this interpretation is an oversimplification of the claimed invention and the technology involved therewith. The issue is not only to operate at a much lower angular speed than is found in a decanter, but also to use lower temperatures than those used by Succer et al. (see above). As noted above, in the prior art combination there is no motivation for the skilled to modify accordingly the teachings of the references in order to arrive at the process of the present invention.

As such, the instantly claimed process is not obvious over the combined reference teachings and withdrawal of the rejection is respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact MaryAnne Armstrong, PhD, Reg. No. 40,069 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By _____

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